

SCRA

(Servicemembers Civil Relief Act)



AEDC/JA

Legal Assistance & Preventive Law
Pamphlet Series

**Office of the Staff Judge Advocate
Arnold AFB, Tennessee**



AEDC/JA
Telephone: (931) 454-7814 / DSN 340-7814
100 Kindel Drive, Suite B327
Arnold AFB, TN 37389-2327
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***The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.**

INTRODUCTION

President George W. Bush signed the Servicemembers Civil Relief Act (SCRA) into law on 19 December 2003. The SCRA clarifies and strengthens the rights and protections afforded to military members. It expands the definition of servicemembers to include reservists and National Guard and certain protections are provided to the dependents of servicemembers. The Act allows servicemembers to postpone certain civil obligations when the servicemembers' ability to represent himself or herself is affected by military service. The Act also provides certain types of protection from financial obligations and liabilities including rent, installment contracts, leases, civil legal proceedings, life insurance and taxes.

PROVISIONS

Automatic Stay of Proceedings: Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, the SCRA permits a delay of civil court proceedings. The SCRA provides for an automatic, non-discretionary 90-day stay of civil proceedings upon application of the servicemember. To obtain the automatic stay, the servicemember must demonstrate their duty has a material effect on their ability to assert or defend an action, and provide the court a date of availability. A servicemember must submit a letter from their commander stating military duty prevents them from appearing in court and that military leave is not authorized. Additional stays may be permitted if the above requirements are met, at the court's discretion. It is important to note that an application for stay does not constitute an appearance.

Stay or Vacation of Judgments: If military service materially affects a servicemember's ability to comply with a judgment or order, they may apply for a stay of execution. This stay is for the period of service plus 90 days. The court may also act on its own motion (without servicemember application) and has the ultimate authority to set terms and amounts for any installment payments.

Default Judgments: Before a default judgment may be entered against a military member who has not appeared before the tribunal, the court must appoint an attorney to represent that servicemember. If absent from a hearing due to a military obligation, upon application, a court must reopen a default judgment if the servicemember can demonstrate that their military service had a material affect on their ability to appear and defend the case and a meritorious defense exists.

FINANCIAL OBLIGATIONS

Termination of Residential Leases: A servicemember may terminate a residential lease if the member receives orders for a permanent change of station or to deploy for 90 or more days. The servicemember must provide written notice (memo or letter) and a copy of the relevant orders.

Termination of Vehicle Leases: A servicemember may terminate a vehicle lease without penalty upon receiving OCONUS PCS orders or orders to deploy for 180 or more days. Notice of termination must be in writing, delivered to the lessor, and the vehicle must be surrendered within 15 days of termination notice. While no penalties are available for early termination, the lessor is entitled to fees for unreasonable wear and tear and/or excess mileage.

Eviction: A landlord may only evict a servicemember or his or her dependents upon getting a court order. However, if the servicemember's rent does not exceed \$2,400 per month and their ability to pay is materially affected by their service, a court must grant a stay for a minimum of 90 days. The court also has authority to adjust the lease obligations.

Mortgage Foreclosure Protection/Installment Contracts: The Act requires a court order for a foreclosure or repossession of property when the servicemember is in breach of the contract. The court shall stay the proceeding if the servicemember's ability to comply with the contract terms is materially affected by his or her

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military service. The SCRA only applies to pre-service obligations – not obligations entered into after service began. The court may either stay the proceedings or adjust the obligation.

6% Interest Cap: If a military member had interest-bearing debts before entering active duty, he or she may be able to reduce the interest rate to six percent. A pre-military creditor is required to reduce the interest rate to six percent upon receipt of written notice the debtor has entered active duty military service. Any interest in excess of the 6% cap must be forgiven and cannot be added to the end of the obligation. A creditor may petition a court to return to the previous higher interest rate, if the creditor can establish that entering active duty did not materially affect the debtor. Courts normally compare the debtor's pre-service and service income to determine material effect in this instance. If the debtor is making equal or more money after entering active duty, the reduction to six percent interest may not apply. This 6% interest cap does not apply to guaranteed student loans.

CONCLUSION:

The SCRA has more applications than can be discussed thoroughly in this fact sheet. However, it is important to note the SCRA affords no protection in criminal matters and a servicemember may waive the protections provided by the SCRA. If you have questions, consult an attorney to determine whether the SCRA provides protections for your particular situation.